

**REMARKS**

**I. Status of the Claims**

Claims 1 and 29-33 are pending. Further to the transmittal letter filed July 22, 2003, claims 2-28 have been canceled in this paper to ensure that this amendment is entered.

**II. Information Disclosure Statement**

The Examiner did not sign page 4 of the Form PTO-1449 submitted with the Information Disclosure Statement filed August 17, 2004. Furthermore, the Examiner did not indicate that the co-pending applications cited on pages 4-7 of the Forms PTO-1449 had been considered. Accordingly, Applicants respectfully request that the Examiner consider these cited references, and sign and initial the Forms PTO-1449 indicating that the references have been considered. A duplicate copy of the previously filed Forms PTO-1449 is attached for the Examiner's convenience.

**III. Rejections Under 35 U.S.C. § 102**

**A. U.S. Patent No. 5,968,494**

The Examiner rejected claims 1 and 29-33 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,968,494 ("Kukkala"). Applicants respectfully disagree and traverse the rejection for at least the following reasons.

Each of the presently pending claims recites that the "composition provides a reshapable effect." The Examiner has asserted that "[hair] reshapable is same [sic] as hair fixatives." Non-Final Office Action at 2.

For a reference to be anticipatory, every element recited in the claim must be disclosed in the reference. See *Verdegaal Bros. v. Union Oil Co. of Cal.*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."). Furthermore, the words of a claim must be given their plain meaning unless Applicant has provided a clear definition in the specification. *MSM Investments Co. v. Carolwood Corp.*, 1339-40, 59 U.S.P.Q.2d 1856, 1859-60 (Fed. Cir. 2001).

In the present specification, Applicants have defined the phrase "reshapable hair styling composition" to mean "a hair styling composition providing hair styling that can be restored or modified without new material or heat being applied." See Specification at page 3, lines 7-9. The specification further states that "[o]ther terms, which may be synonymous with reshapable, include repositionable, remoldable, restyleable, and remodelable."

Kukkala neither teaches nor suggests a composition that has a reshapable effect. In contrast, Kukkala teaches that desirable properties include "a high degree of hold, gloss, curl retention, stiffness, and humidity resistance." See US '494 at col. 1, lines 64-67. Furthermore, Kukkala only discloses applying the composition after the hair has been styled. See, e.g., US '494 at col. 16, line 64 to col. 18, line 63.

Therefore, Kukkala does not teach a composition having a reshapable effect as recited in the claims. Accordingly, the 35 U.S.C. § 102(b) rejection of claims 1 and 29-33 over Kukkala is improper, and Applicants respectfully request its withdrawal.

**B. U.S. Patent No. 5,626,840**

The Examiner rejected claims 1 and 29-33 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,626,840 ("Thomaides"). Applicants respectfully disagree and traverse this rejection for at least the following reasons.

As explained above, the present claims recite a composition that "provides a reshapable effect." Thomaides, however, does not disclose a composition that provides a reshapable effect. Moreover, the disclosure of Thomaides teaches away from a composition having a reshapable effect. Thomaides discloses that the composition has a "stiffness and resistance to combing." See US '840 at col. 14, lines 56-62. Thus, the composition of Thomaides provides resistance to restyling or reshaping the hair.

Accordingly, the 35 U.S.C. § 102(b) rejection of claims 1 and 29-33 over Thomaides is improper, and Applicants respectfully request its withdrawal.

**C. U.S. Patent No. 6,495,119**

The Examiner rejected claims 1 and 29-33 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,495,119 ("Sturla"). Applicants respectfully disagree and traverse this rejection for at least the following reasons.

Sturla discloses a composition for fixing a hairstyle, and states, "[f]ixing of the hairstyle is an important element of styling which can comprise maintaining the shape already given or in shaping the hair and fixing it simultaneously." US '119 at col. 1, lines 18-20. However, the present claims recite that the composition "provides a reshapable effect." Sturla is silent as to a composition having a reshapable effect, or to reshaping or restyling a hairstyle after it has been fixed. Furthermore, a reshapable effect is not

inherently present in a composition that is only disclosed to fix a hairstyle. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. M.P.E.P. § 2112. The Examiner has not provided any evidence that a reshapable effect is necessarily present in the composition of Sturla.

Therefore, Sturla does not teach all of the limitations recited by the present claims. Accordingly, the 35 U.S.C. § 102(e) rejection of claims 1 and 29-33 over Sturla is improper, and Applicants respectfully request its withdrawal.

#### **IV. Double Patenting Rejections**

##### **A. Rejection Under 35 U.S.C. § 101**

The Examiner rejected claims 2-28 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-27 of prior U.S. Patent No. 6,613,314.

Applicants have cancelled claims 2-28, and therefore respectfully submit that the ground for rejection should be withdrawn as moot.

##### **B. Nonstatutory Double Patenting Rejection**

The Examiner rejected claims 1 and 29-33 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 25-27 of U.S. Patent No. 6,613,314, which is assigned to L'Oréal, and which is the parent application to the present application.

While Applicants disagree with the merits of the rejection, in order to advance the prosecution of this application, Applicants filed concurrently herewith a Terminal Disclaimer over U.S. Patent No. 6,613,314. Accordingly, Applicants respectfully submits that this ground for rejection should be withdrawn as moot.

**V. Conclusion**

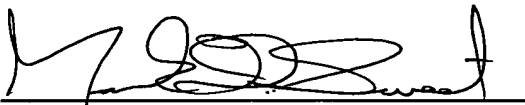
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: June 13, 2005

By:   
Mark D. Sweet  
Reg. No. 41,469

**Attachment: Copy of Forms PTO-1449 originally filed August 17, 2004.**

**INFORMATION DISCLOSURE CITATION**  
(Use several sheets if necessary)

Atty. Docket No.	05725.0663-01	Serial No.	10/623,741
Applicant	Isabelle ROLLAT et al.		
Filing Date	July 22, 2003	Group:	1615

U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	Re. 34,730	09/1994	Salatin et al.	427	404	
	*	3,479,310	11/1969	Dieterich et al.	260	29.2	
	*	3,600,359	08/1971	Miranda	260	77.5	
	*	3,700,643	10/1972	Smith et al.	260	77.5	
	*	4,307,219	12/1981	Larson	528	71	
	*	4,423,179	12/1983	Guagliardo	524	539	
	*	4,507,430	03/1985	Shimada et al.	524	839	

FOREIGN PATENT DOCUMENTS							
		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	0 039 162 A2	11/04/81	Europe			
	*	0 299 148 A2	01/18/89	Europe			
	*	0 636 361	02/1995	Europe			No
	*	0 637 600	02/1995	Europe			Abstract
	*	0 656 021	06/1995	Europe			No
	*	0 696 607	02/1996	Europe			No

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
*	English language translation of JP 10-203937
*	Derwent Abstract of EP 0 637 600
*	Derwent Abstract of EP 0 751 162
*	Derwent Abstract of EP 0 938 889

Examiner	Date Considered
*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	
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U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	4,542,012	09/17/85	Dell	424	28	
	*	4,558,149	12/10/85	Larson	560	14	
	*	4,667,661	05/1987	Scholz et al.	128	90	
	*	4,699,133	10/1987	Schafer et al.	128	156	
	*	4,738,992	04/1988	Larson et al.	521	157	
	*	4,746,717	05/1988	Larson	528	68	
	*	4,798,721	01/1989	Yahagi et al.	424	70	
	*	4,978,527	12/18/90	Brink et al.	424	78	

FOREIGN PATENT DOCUMENTS							
		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	0 751 162	01/1997	Europe			Abstract
	*	0 779 310	06/1997	Europe			No
	*	0 807 647 A1	11/19/97	Europe			
	*	0 838 211	04/1998	Europe			
	*	0 838 212	04/1998	Europe			
	*	0 937 451	08/1999	Europe			
	*	0 938 889	09/1999	Europe			Abstract

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
*	Derwent Abstract of EP 0 957 119
*	Derwent Abstract of JP 10-203937 637 600

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U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	4,985,239	01/1991	Yahagi et al.	424	70	
	*	5,045,601	09/03/91	Capelli et al.	525	327.1	
	*	5,120,531	Jun-92	Wells et al.	424	70	
	*	5,173,291	12/22/92	Brink et al.	424	70.86	
	*	5,180,061	01/19/93	Khan et al.	206	570	
	*	5,230,701	07/1993	Meyer et al.	602	76	
	*	5,302,385	04/12/94	Khan et al.	424	486	
	*	5,334,650	08/1994	Serdiuk et al.	524	591	
	*	5,334,690	08/1994	Schafheutle et	528	71	
	*	5,334,691	08/1994	Gould et al.	528	76	
	*	5,370,910	12/1994	Hille et al.	427	407.1	

FOREIGN PATENT DOCUMENTS							
		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	0 957 119	11/1999	Europe			Abstract
	*	1 068 859	01/2001	Europe			
	*	2 782 637	Mar-00	France			Abstract
	*	10-203937	08/1998	Japan			Yes
	*	WO 94/03510	02/1994	PCT			Abstract
	*	WO 94/13724	06/1994	PCT			Abstract

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U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	5,610,232	03/11/97	Duan et al.	524	840	
	*	5,616,400	04/1997	Zhang	428	195	
	*	5,626,840	05/1997	Thomaides et	424	70.11	
	*	5,643,581	07/1997	Mougin et al.	424	401	
	*	5,650,159	07/1997	Lion et al.	424	401	
	*	5,672,653	09/1997	Frisch et al.	524	591	
	*	5,679,754	10/1997	Larson et al.	528	28	

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		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	WO 96/14049	05/1996	PCT			Abstract
	*	WO 97/17052	05/1997	PCT			Abstract
	*	WO 97/17386	05/1997	PCT			Abstract
	*	WO 98/38969	09/1998	PCT			Abstract

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
*	Co-pending U.S. Application No. 09/627,055; Attorney Docket No.: 05725.0662-00000 Title: RESHAPABLE HAIR STYLING COMPOSITION COMPRISING ACRYLIC EMULSIONS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: July 27, 2000
*	Co-pending U.S. Application No. 10/693,966; Attorney Docket No.: 05725.0756-01000 Title: RESHAPABLE HAIR STYLING COMPOSITIONS COMPRISING ACRYLIC EMULSIONS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: October 28, 2003

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Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	5,692,937	12/1997	Zhang	442	149	
	*	5,843,523	12/1998	Mazza et al.	427	208.8	
	*	5,855,208	01/05/99	Askill et al.	128	849	
	*	5,874,072	02/1999	Alwattari et al.	424	70.7	
	*	5,879,668	03/1999	Hanna et al.	424	70.7	
	*	5,911,973	06/1999	de la Poterie	424	61	
	*	5,925,724	07/1999	Cenens et al.	528	85	

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		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	WO 99/39688	08/1999	PCT			
	*	WO 99/43289	09/1999	PCT			Abstract
	*	WO 99/47127	09/1999	PCT			

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
*	Co-pending U.S. Application No. 10/395,064; Attorney Docket No.: 05725.0911-01000 Title: Reshapable Hair Styling Composition Comprising Heterogeneous (Meth)Acrylic Copolymer Particles By: Isabelle ROLLAT et al. Filed: March 25, 2003
*	Co-pending U.S. Application No.: not assigned - Attorney Docket No. 05725.0912-01000 Title: Reshapable Hair Styling Composition Comprising (Meth) Acrylic Copolymers of Four or More Monomers By: Isabelle ROLLAT et al. Filed: October 28, 2003

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U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	5,951,993	09/1999	Scholz et al.	424	405	
		5,961,989	10/1999	Mougin et al.	424	401	
	*	5,962,620	10/1999	Reich et al.	528	76	
	*	5,968,494	10/1999	Kukkala et al.	424	70.1	
	*	5,968,495	Oct-99	Bolich Jr. et al.	424	70.12	
	*	5,972,354	10/1999	de la Poterie et	424	401	
	*	5,981,650	11/1999	Zhao et al.	524	591	
	*	5,989,570	11/1999	Lion et al.	424	401	
	*	5,993,972	11/1999	Reich et al.	428	423.1	
	*	5,997,886	Dec-99	Peffly et al.	424	401	

FOREIGN PATENT DOCUMENTS							
		Document Number	Date	Country	Class	Sub Class	Translation Yes or No
	*	WO 99/48941	09/30/99	PCT			Abstract
	*	WO 99/58100	11/1999	PCT			Abstract
	*	WO 99/63955	12/1999	PCT			Abstract

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
	* Co-pending U.S. Application No. 10/023,330; Attorney Docket No.: 05725.0922-00000 Title: RESHAPABLE HAIR STYLING RINSE COMPOSITION COMPRISING (METH)ACRYLIC COPOLYMERS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: December 20, 2001

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U.S. PATENT DOCUMENTS							
Examiner Initial*		Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	*	6,007,793	12/1999	Bhatt et al.	424	47	
		6,126,929	10/2000	Mougin	424	70.7	10/1998
	*	6,165,239	Dec.-00	Hedrick et al.	51	295	07/1977
	*	6,319,959	Nov-01	Mougin et al.	514	772.1	06/1996
		6,346,234	02/2002	Rollat et al.	424	47	10/1999
		6,433,073	08/2002	Kantner et al.	524	591	07/2000
		6,517,821	02/2003	Rollat et al.	424	70.11	07/2000
		6,520,186	02/2003	Rollat et al.	132	203	01/2001
		6,613,314	09/2003	Rollat et al.	424	70.1	07/2000
		6,645,478	11/2003	Rollat et al.	424	70.1	06/2001
		6,667,378	12/2003	Rollat et al.	526	266	06/2001
		6,689,346	02/2004	Rollat et al.	424	70.1	10/2000

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
*	Co-pending U.S. Application No. 10/022,253; Attorney Docket No.: 05725.0959-00000 Title: RESHAPABLE HAIR STYLING NON-RINSE COMPOSITION COMPRISING (METH)ACRYLIC COPOLYMERS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: December 20, 2001

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